

FILED IN THE
UNITED STATES
BANKRUPTCY COURT

2003 MAR -6 A 9:26

DISTRICT OF UTAH

BY Y
DEPUTY CLERK

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Attorneys for Plaintiff Reorganized Debtor

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:
C & M Properties, LLC, a Utah limited
liability company,

Debtor.

C & M Properties, LLC, a Utah limited
liability company,

Plaintiff,

vs.

Richard D. Burbidge, an individual; Jefferson
W. Gross, an individual; Burbidge &
Mitchell, a Utah partnership; Richard D.
Burbidge, Inc., a Utah corporation; Stephen
B. Mitchell, Inc., a Utah corporation;
Jefferson W. Gross, P.C., Inc., a Utah
corporation; and Doe Defendants 1-10,

Defendants.

Bankruptcy No. 01-38555 GEC

Chapter 11

Adv. No. 03P-2024 GEC

AFFIDAVIT OF PETER W. BILLINGS

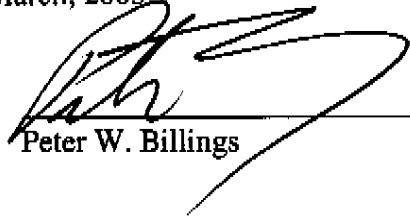


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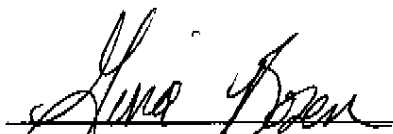
Peter W. Billings, being first duly sworn upon his oath, deposes and states as follows:

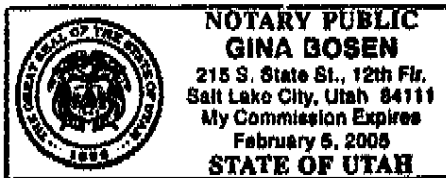
1. I am President of the law firm of Fabian & Clendenin ("F&C").
2. F&C was retained by C&M Properties, L.L.C. ("C&M") to represent it in the above-captioned Chapter 11 bankruptcy case.
3. In July 2002, C&M negotiated a settlement agreement ("the July 19th Settlement Agreement") with insiders and former insiders who included the major secured and unsecured creditors. The Settlement Agreement specifically listed all non-insider unsecured creditors, including Burbidge & Mitchell and its attorneys, as "not released, directly or indirectly, and no claims are waived, settled or released against [them]." July 19th Settlement Agreement, p. 31, 10. A copy of the Settlement Agreement was attached as Exhibit "A" to C&M's previously filed Memorandum in Opposition to Motion to Dismiss.
4. On July 29, 2002, C&M filed a motion to approve the July 19th Settlement Agreement and other settlement agreements and served of the motion upon Burbidge & Mitchell and other interested parties.
5. On August 5, 2002, Richard Burbidge telephoned me and asked why Burbidge & Mitchell was not included in the July 19th Settlement Agreement. He stated that Burbidge & Mitchell would not allow the settlement to be approved unless it provided for a release of Burbidge & Mitchell. I told him that since under the July 19th Settlement Agreement, High Mountain was ending up in control of C&M which would own the claim, he should speak with Jonathan Hafen, counsel for High Mountain.
6. The July 19th Settlement Agreement was not changed to provide a release of Burbidge & Mitchell. Burbidge & Mitchell did not object to the July 19th settlement.

DATED this 6TH day of March, 2003


Peter W. Billings

SUBSCRIBED AND SWORN to before me this 6TH day of
March, 2003.


Notary Public



CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 2003, I caused to be hand-delivered, a true and correct copy of the foregoing Affidavit of Peter W. Billings, to:

Duane H. Gillman
R. Mont McDowell
McDowell & Gillman PC
50 West Broadway, 12th Floor
Salt Lake City, Utah 84101

James S. Jardine
Ray Quinney & Nebeker
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Salt Lake City, Utah 84111

United States Trustee
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Salt Lake City, Utah 84111